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abnormal one, and the general form and structure of the bones, was admissible.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1660-1677; Dec. Dig. § 383.* 5 Va.-W. Va. Enc. Dig. 777.]

Error to Circuit Court, Montgomery County.

Action by O. C. Bell against the Virginian Railway Company. Judgment for plaintiff, and defendant brings error. Reversed, verdict set aside and cause remanded for new trial.

Hall & Woods, of Roanoke, *Roop & Phlegar*, of Christianburg, and *G. A. Wingfield*, of Norfolk, for plaintiff in error.

A. P. Staples, Jr., of Lexington, and *A. B. Hunt*, of Roanoke, for defendant in error.

HAIRSTON et al. v. HILL et al.

Jan. 13, 1916.

[87 S. E. 573.]

1. Mines and Minerals (§ 58*)—"Contract" to Lease—Validity.—Where the owners of ore lands for pecuniary consideration, agreed in writing to lease to a defendant all the iron ore in, under, and upon a tract of land, together with all rights of way for railroads, etc., necessary for mining, removing, and shipping the ore, and the use of timber for a term of 25 years from the date of the lease, for the price of 25 cents per ton royalty for ore, which agreement contained stipulations that it should become void unless defendant should commence to develop the property, pay minimum royalties, etc., and that the owners would sell on or before fixed dates at fixed minimum prices, such instrument was a valid contract, and not a mere option, as it contained all the essential elements of a good executory contract; i. e., competent parties, legal subject-matter, valuable consideration, and mutual assent.

[Ed. Note.—For other cases, see Mines and Minerals, Cent. Dig. §§ 168, 169; Dec. Dig. § 58.* 9 Va.-W. Va. Enc. Dig. 832.]

For other definitions, see Words and Phrases, First and Second Series, Contract.]

2. Contracts (§§ 154, 170*)—Construction.—In the interpretation of contracts regard must be given to the intention of the parties and their version of the instrument's meaning while an unreasonable construction is always to be avoided.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 735, 753; Dec. Dig. §§ 154, 170.* 3 Va.-W. Va. Enc. Dig. 395.]

3. Mines and Minerals (§ 58*)—Contract to Lease—Validity—Con-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

struction of Parties.—Where the parties who had contracted in writing with the owners of ore land to lease the same, which contract, in the owners' suit for specific performance, they contended was a mere option, had paid \$500 earnest money, incorporated a company and assigned the contract to it, took possession and developed the ore, constructing a railroad to the mines and paying minimum royalties as provided, making a total expenditure of \$325,000, the original contract could not be lightly overturned on the theory that it was a mere option and could be abandoned at the pleasure of either party.

[Ed. Note.—For other cases, see Mines and Minerals, Cent. Dig. §§ 168, 169; Dec. Dig. § 58.* 9 Va.-W. Va. Enc. Dig. 832.]

4. Contracts (§ 9*)—Cancellation—Grounds—Difference in Interpretation.—The mere fact that differences in opinion as to matters of detail regarding the interpretation of a contract arising between the parties is not ground for cancellation of the instrument.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 10-20; Dec. Dig. § 9.* 3 Va.-W. Va. Enc. Dig. 434.]

5. Specific Performance (§ 88*)—Contract to Lease—Grounds.—Where the owners of ore lands, who contracted to lease the same for mining purposes to defendant, constantly remained ready and willing to perform their agreement throughout by executing a lease to defendant and the corporation which he had formed, and to which he had assigned his contract, incorporating therein the entire contract, such owners were entitled to specific performance of the contract and the acceptance by defendants of a lease, and to personal decrees against defendants of royalties due.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. § 226; Dec. Dig. § 88.* 9 Va.-W. Va. Enc. Dig. 847.]

6. Mines and Minerals (§ 79*)—Contract to Lease—Assignment—Effect.—Where the owners of ore lands contracted to lease them for mining purposes, the assignment by the lessee of his contract to a corporation which he formed did not relieve him from personal liability to pay the royalties contracted for and to see that all covenants were performed.

[Ed. Note.—For other cases, see Mines and Minerals, Cent. Dig. § 209; Dec. Dig. § 79.* 9 Va.-W. Va. Enc. Dig. 847.]

Appeal from Circuit Court of City of Roanoke.

Suit by E. P. Hairston and others against Frank A. Hill and the Virginia Ore & Lumber Company, Incorporated. From a decree dismissing the original and amended bills, plaintiffs ap-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

peal. Reversed and remanded for further proceedings in accordance with the opinion.

Hall, Woods & Cox, of Roanoke, for appellants.

Lucian H. Cocke and *Staples & Cocke*, all of Roanoke, for appellees.

VIRGINIAN RY. CO. *v.* ANDREWS.

Jan. 13, 1916.

[87 S. E. 577.]

1. Master and Servant (§ 278*)—Injuries to Servant—Liability of Master—Statutory Requirements—Evidence.—Evidence held to show that an hour before the injuries complained of, defendant had complied with every requirement of Boiler Act Feb. 17, 1911, c. 103, 36 Stat. 913 (Comp. St. 1913, §§ 8630-8639) and that the engine, boiler, and appurtenances which exploded, injuring plaintiff servant, measured up to the statutory standard.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954, 956-958, 960-969, 971, 972, 977; Dec. Dig. § 278.* 9 Va.-W. Va. Enc. Dig. 724.]

2. Master and Servant (§ 124*)—Injuries to Servant—Liability of Master—Statutory Regulation—Construction.—The Boiler Act, regulating the inspection and care of locomotive boilers, cannot receive the same interpretation as Employers' Liability Act April 22, 1908, c. 149, 35 Stat. 65 (Comp. St. 1913, §§ 8657-8665) and Safety Appliance Act, March 2, 1893, c. 196, 27 Stat. 531 (Comp. St. 1913, §§ 8605-8612), since the latter relate to appliances which work either automatically or are simple in construction, whereas, locomotive boilers require great care and supervision by the engineer; the two instrumentalities being so diverse as not to be subject to the same rules.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 235-242; Dec. Dig. § 124.* 9 Va.-W. Va. Enc. Dig. 724.]

3. Master and Servant (§ 265*)—Injuries to Servant—Liability of Master—Statutory Regulation.—Under the Boiler Act, when the railroad has turned over to the engineer a locomotive engine and boiler, and appurtenances in proper condition and safe to operate, its liability for injuries to him caused by the boiler ceases, since it is not an insurer of his safety throughout the run, so that, in an action for injuries received during the run, the plaintiff must show that the defendant was guilty of the negligence charged.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 877-908, 955; Dec. Dig. § 265.* 9 Va.-W. Va. Enc. Dig. 724.]

4. Witnesses (§ 37*)—Competency—Knowledge.—It was error to

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